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9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 IN RE: INCRETIN MIMETICS
12 PRODUCTS LIABILITY
13 LITIGATION

) MDL Case No.13md2452 AJB (MDD)

) As to all related and member cases

) ORDER GRANTING MOTION TO
14 SEAL DEFENDANT'S MOTION TO
15 DISQUALIFY DR. G. ALEXANDER
16 FLEMING AND STRIKE EXPERT
REPORT

) (Doc. No. 900)

17 Presently before the Court is Defendant Novo Nordisk Inc.'s ("Novo") motion to
18 seal its motion to disqualify Dr. G. Alexander Fleming as an expert witness for Plaintiffs
19 and strike Dr. Fleming's expert report. (Doc. No. 900.) Plaintiffs filed a response to the
20 motion to seal on January 23, 2015. (Doc. No. 917.) For the reasons set forth below, the
21 Court **GRANTS** Novo's motion to seal.

22 **I. INTRODUCTION**

23 On December 15, 2014, the parties to the above litigation exchanged expert
24 reports related to preemption as set forth by the terms of the amended scheduling order
25 issued by the Court on November 17, 2014. (See Doc. No. 809.) Plaintiffs served
26 opposing parties with the expert report of Dr. G. Alexander Fleming. On January 16,
27 2015, Novo moved to disqualify Dr. Fleming as an expert for Plaintiffs and to strike his
28 expert report. (Doc. No. 902.) Novo also moved to file its motion to disqualify and the

1 exhibits attached to the disqualification motion under seal. (Doc. No. 900.) Novo's
2 motion to disqualify and motion to seal is predicated on Dr. Fleming's previous consult-
3 ing relationship with Novo with respect to one of the pharmaceutical drugs at issue in
4 this litigation. (*Id.* at 4.) Novo moves to seal the motion to disqualify and attached
5 exhibits on the grounds that substantial competitive harm could result from the disclo-
6 sure of the information contained within the motion and attached exhibits. (*Id.* at 6.)
7 Novo also argues that it would be prejudiced, and patients potentially harmed, if Dr.
8 Fleming's assessment as to the underlying drug was available to the public without the
9 appropriate context. (*Id.* at 7.) Finally, Novo argues the policy underlying confidential
10 consulting agreements in the pharmaceutical industry would be undermined if the motion
11 to disqualify and the attached exhibits are not maintained under seal. (*Id.*) Plaintiffs do
12 not object to Novo's motion to seal, but wish to reserve the right to further object once
13 dispositive motions are filed. (Doc. No. 917, p. 1.)

14 **II. LEGAL STANDARD**

15 Courts have historically recognized a "general right to inspect and copy public
16 records and documents, including judicial records and documents." *Nixon v. Warner*
17 *Commc'ns, Inc.*, 435 U.S. 589, 597 & n.7 (1978). "Unless a particular court record is
18 one 'traditionally kept secret,' a 'strong presumption in favor of access' is the starting
19 point. *Kamakana v. City and Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006)
20 (quoting *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003)).
21 In order to overcome this strong presumption, a party seeking to seal a judicial record
22 must articulate justifications for sealing that outweigh the public policies favoring
23 disclosure. *See id.* at 1178–79. However, the presumption in favor of public access does
24 not apply with equal force in the context of non-dispositive motions. *Id.* at 1179. In
25 such cases, a party must only demonstrate that good cause exists to justify sealing a
26 document. *Foltz*, 331 F.3d at 1135. When moving to seal all of the information in a
27 document, the parties must provide good cause to seal the document in its entirety. *See*
28 *Kamakana*, 447 F.3d at 1183. Good cause may exist to seal records that are "privileged,

1 contain trade secrets, contain confidential research, development or commercial informa-
2 tion, or if disclosure of the information might harm a litigant's competitive standing.”
3 *Dugan v. Lloyds TSB Bank, PLC*, No.12cv0249, 2013 WL 1435223, at *2 (N.D. Cal.
4 Apr. 9, 2013); *see also Nixon*, 435 U.S. at 598 (recognizing sources of business informa-
5 tion that might harm a litigant's competitive standing may warrant being maintained
6 under seal).

7 **III. DISCUSSION**

8 Upon review of Novo's motion to disqualify, the attached exhibits, and the
9 declaration of Heidi Levine, the Court finds good cause exists to seal the documents.
10 Disclosure of internal documents including secrecy agreements, clinical trial data, and
11 related analyses could result in competitive harm to Novo if not maintained under seal.
12 *See Nixon*, 435 U.S. at 598. The same is true of internal documents chronicling the FDA
13 approval process, advisory board meeting minutes, and safety conclusions, all of which
14 is either discussed in or attached to the disqualification motion. Furthermore, Novo
15 should not be forced to disclose the confidential basis for the motion to disqualify. Such
16 a result could undermine the purpose of the disqualification motion altogether and the
17 underlying consulting agreement. In light of the weaker public interest in non-
18 dispositive motions, and the potential competitive harm that could result from disclosure,
19 good cause exists to maintain the motion to disqualify and its attached exhibits under
20 seal.

21 **IV. CONCLUSION**

22 For the reasons set forth above, Novo's motion to seal is **GRANTED**. The Clerk
23 of Court is instructed to file the currently sealed, lodged, proposed documents, (Doc. No.
24 901), under seal. Plaintiffs may renew their objections to the documents at issue if

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1 necessary in connection with the filing of future dispositive motions.

2 **IT IS SO ORDERED.**

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4 DATED: February 2, 2015

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6 Hon. Anthony J. Battaglia
7 U.S. District Judge
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